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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

MIDWAY MANUFACTURING COMPANY: Deposition of
vs. : Richard I. Seligman
THE MAGNAVOX COMPANY :
and
SANDERS ASSOCIATES, INC. :

74C 1030

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION
THE MAGNAVOX COMPANY, et al :

vs. :
BALLY MANUFACTURING :
CORPORATION, et al :

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ATARI, INC. :
vs. :
THE MAGNAVOX COMPANY :
and :
SANDERS ASSOCIATES, INC. :

ERNEST W. NOLIN & ASSOCIATES

General Stenographic Reporters

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ORIGINAL

Deposition taken pursuant
to subpoena and notice at the Sanders Associates,
Inc.; Headquarters, Spit Brook Road; Nashua, New
Hampshire; Friday, November 21, 1975; commencing
at nine-thirty in the forenoon.

PRESENT:

For Midway Manufacturing
Company, Bally Manufacturing
Corporation and Empire:

Donald L. Welsh, Esq., and
A. Sidney Katz, Esq., 135 South
LaSalle Street, Chicago,
Illinois.

For Atari, Inc.:

Thomas O. Herbert, Esq.,
(Interrogatories by: 160 Sansome Street, 15th Floor,
San Francisco, California.

Q. Mr. Seligman, were any of the instructions to
search for documents For Sanders Associate, Inc.,
and Magnavox Company:

A. No.
Theodore W. Anderson, Esq., and
James T. Williams, Esq.,
77 West Washington Street,
Chicago, Illinois.

Referring to paragraph 77 of the deposition, did you bring
subpoena and notices to deposition, did you bring
For Sanders Associates:

drawings, circuit diagrams, written descriptions,
Louis Etlinger, Esq., and
Richard I. Seligman, Esq.,
Daniel Webster Highway, South,
Nashua, New Hampshire.

development of the alleged inventions of the patents
in issue.

For the Magnavox Company:

Thomas A. Briody, 1700 Magnavox
Way, Fort Wayne, Indiana.

ALSO PRESENT:

For Atari, Inc.:

Nolan Bushnell

Stenotype Reporter:

before the witness of Ronald J. Hayward

raise -- before the witness and permit the

RICHARD I. SELIGMAN

witness to identify these is a party not a

called as a witness, being duly sworn, was further examined
and continued his testimony as follows:

(Interrogatories by Mr. Welsh.)

1 Q. Mr. Seligman, were any of the instructions to
search for documents reduced to writing?

A. No. There may be a dispute, a contention with

2 Q. Referring to paragraph 6 of the attachment to the
subpoena and notices of deposition, did you bring
drawings, circuit diagrams, written descriptions,
notes, memoranda and other documents relating to
the conception, reduction to practice testing and
development of the alleged inventions of the patents
in suit?

A. Yes, I believe so. I believe that the documents are,

Q. What are those documents and things? I understand

A. I believe we have the notebooks or what do we have, Jim? A number of laboratory notebooks. That we

Q. Would you describe those for the record, please?

A. The first one is a blue notebook labeled "ECM 373."

MR. ANDERSON: Mr. Welsh, before the witness continues, I think we have to raise - - - Before we continue and permit the witness to identify these laboratory notebooks and any dates involved in those notebooks, I feel that we must raise the question of revealing to the new party, Atari, or to Mr. Nolan Bushnell, the testimony regarding dates and work done in various periods of time because it is my understanding that there may be a dispute, a contention with respect to the timing of work done by Mr. Bushnell who is present here in the room versus the timing of work done by the inventors at Sanders, and I have just discussed this with Mr. Herbert and Mr. Herbert has indicated that neither he nor Mr. Bushnell at the present time have any knowledge of the dates alleged by Sanders for the work done

and have no knowledge of what the documents are, even though, Mr. Katz and Mr. Welsh, I recognize that you have had access to these books and have copies of them and we have stated dates that we contend for invention. The fact is, Mr. Bushnell does not now know that, as I understand it, nor does Mr. Herbert. Until we know or have some system of handling what his contentions are with respect to his work, we feel that he must be sequestered from this deposition with respect to early work done by Sanders and I think that Mr. Herbert suggested that he and Mr. Bushnell leave the room and discuss this problem before we go ahead and I think that is an excellent idea.

MR. WELSH: And I suggest that we go with them to discuss it.

MR. HERBERT: Let me say we already have Magnavox's and Sanders' answers to interrogatories in the Chicago case prior to Atari being involved as a party. I read those answers to interrogatories and I don't remember today what your dates of invention are or anything, but I do have those answers to interrogatories in

my file. They have not, to my recollection, been forwarded to Atari.

Now, could you state now, MR. ANDERSON: Yes, and I did indicate that to you when we were talking off the record that we have stated our dates and I think that doesn't alter the fact that Atari and Mr. Bushnell don't yet know them and we think it is in the interest of all the parties as I told you that there be independent statements of positions in this regard because certainly if Mr. Bushnell knew the dates that we are contending and did the work and then testified, especially if it is based on oral rather than documentary evidence as to dates to work prior, it will seriously put his testimony in jeopardy. I would have to raise that point and I think you would understand that. Therefore, I think it is in everyone's best interest if we could somehow resolve this now and each party take a position now in some way and I realize the problems it raises with you.

MR. HERBERT: Let me take a few minutes to talk with Mr. Bushnell and Mr. Welsh.

MR. ANDERSON: And I would admonish to you now that if Mr. Bushnell does not know those dates now, that he should not know those dates, please.

(Discussion off the record.)

MR. HERBERT: We have discussed the problem and have come to the agreement that it is certainly not necessary for Mr. Bushnell to have the dates of the Sanders inventions at this time. Consequently, we are willing to not disclose those dates as we know them or as it will be developed here to Mr. Bushnell at this time or up until the time that we have our own dates in some evidenciary form, either documentary or by their testimony and deposition. Mr. Bushnell's presence here, however, was, of course, not to learn those dates, but to be of assistance in the course of the questioning of the technical witnesses which are going to be here this week and next week. I would propose that when we get the transcript, I do intend to give Mr. Bushnell a copy of that transcript. However, I will delete the dates; or, if you prefer

to do that yourself, give me a copy with the dates deleted for transfer to Mr. Bushnell. When he receives it, it is at least strongly possible that he is going to see questioned areas that I did not see and perhaps that Mr. Welsh and Mr. Katz didn't see that we have missed from a technical point of view and it might be that we would have to come back to explore those areas a little better. Now, I am not looking forward to coming back and I am hoping that it doesn't happen, but I think it is at least a possibility that we have to be aware of. So if that is acceptable to you, we have one other minor condition and that is that you give me a ride to the airport this afternoon.

MR. ANDERSON: Well, to start with last things first, certainly we will be happy to give you a ride to the airport. And it is our desire to expedite this in every way possible to minimize the inconvenience to everyone involved, but to protect everyone's interests and rights in the situation and, as I suggested, I think it will take several weeks, I am sure, to develop a transcript, and if Atari and Mr. Bushnell are in

a position to set down in writing supported by documents in much the same way that a preliminary statement is prepared in an interference, what dates Atari will contend for Mr. Bushnell's work; once that is done, I think we could expedite the thing and we wouldn't have to explore the transcript.

MR. HERBERT: It is possible that that can be done before getting the transcript.

MR. ANDERSON: Would that be acceptable to you, as far as timing is concerned?

MR. HERBERT: Yes.

MR. ANDERSON: I suggest we proceed in that manner.

MR. ETLINGER: Before we proceed, I would like to ask the question, Did I understand correctly that the witness will give the testimony as to the dates and they will be taken out of the transcript?

MR. HERBERT: The copy of the transcript that I give to Mr. Bushnell, yes.

MR. ETLINGER: But the dates will be disclosed?

I would like to do it. MR. ANDERSON: Well,
Mr. Bushnell is ready to leave. All right,
that being the case, MR. HERBERT: He is leaving;
I will be here. to the car to get my suitcase
to bring it back on. MR. ETLINGER: I beg your
pardon, that wasn't mentioned that you would be
here. possibility, we could skip over this, if there
is anything else. MR. ANDERSON: That was a
cryptic comment inherent in the ride to the development
airport. don't know if that is true, I am just
offering that as a possibility. MR. HERBERT: Mr. Bushnell
has the car, I need a ride. MR. ANDERSON: If he is going to
go, there is nothing. MR. ANDERSON: I would prefer
to not go to the airport and confusion of providing
an expurgated copy of the transcript; I would, fine.
much prefer to pin it all down as quickly as a
possible.

MR. BUSHNELL: We will try to
(In session, a recess was taken.)
get that stuff into testimony very shortly. In
fact, if I am not horsing around here the first
of next week, I can probably chase those other
guys. I wonder if you could begin the
description of these. MR. ANDERSON: All right; then

I would like to do it that way.

MR. HERBERT: All right,
that being the case, Mr. Bushnell will leave now.
I will have to go to the car to get my suitcase
to bring it back or transfer it.

MR. ANDERSON: There is one
other possibility, we could skip over this, if there
is anything else, Don, that you plan to do under
the 30-B6 that doesn't involve dates and development
work. I don't know if that is true, I am just
offering that as a possibility.

MR. WELSH: If he is going to
go, there is nothing here that would be of interest
to him that would be left with this witness.

MR. ANDERSON: All right; fine.
Thank you, Mr. Bushnell. Then we will take a
brief recess.

(Whereupon, a recess was taken.)

Q. (By Mr. Welsh) I think we stopped your examination
at a point when you were describing the first
notebook. I wonder if you could begin the
description of these notebooks again so that the

description is all in one place in the transcript?

A. I said this was a blue notebook identified as ECM373.

Q. That is by a label on the outside?

A. That is a label on the outside.

Q. Is there any other identifying material on the outside? Is there any label in it?

A. It says Sanders Associates, Inc., Electronic Countermeasures Division, Engineer's Notebook.

Q. Could you look inside and see if there is any identifying information there?

A. On the inside of the front cover it says ECM373, signature, which is crossed out, and the word "error" written in or printed over it; and under that William L. Harrison.

Q. What does the designation ECM373 mean?

A. Notebooks given to, I believe at this time, personnel that worked in the Electronic Countermeasures group at Sanders, numbers were assigned to them for these notebooks.

Q. Where was that notebook obtained for production here?

A. I believe from one of the inventors.

11 Q. From Mr. Harrison?

A. I can't say for sure.

12 Q. Is there any policy for keeping engineers' notebooks
in a particular place?

A. By the inventor?

13 Q. Well, what is done with notebooks after they are
filled up, is there any policy in that regard?

A. The inventors sometimes they keep them or the
engineers or technicians, sometimes they keep the
notebooks, or sometimes they turn them in to the
Patent Department.

14 Q. Are notebooks kept in the Patent Department?

A. No, they are usually filed away.

15 Q. Are they kept under the custody of the Patent
Department?

A. I don't know what you mean by custody.

16 Q. Well, they might be filed away some place other
than in the Patent Department and still be
under their custody.

A. The Patent Department doesn't have custody over
the files where they would be put away. I believe
it is a dead storage area or something like that.

17 Q. But are they retrievable by the Patent Department?

A. Yes.

Q. And do you know where this particular notebook came from?

A. I believe one of the inventors.

Q. Which one?

A. I am not sure.

Q. By one of the inventors, you mean either Mr. Baer, Rusch or Mr. Harrison?

A. I believe that is correct.

Q. Would you go on with the identification of these notebooks?

A. The next notebook?

Q. Yes.

A. The next one is labeled "Sanders Associates Engineering Notebook" and it is Book No. 4224. The name on it is William T. Tusch and there is a label on the front which says that it was issued on 10-28-66 and completed on 10-18-67. There are also some various writings on that label.

Q. That is a label on the outside of the notebook?

A. Yes, on the outside of the notebook.

Q. Do you know where that notebook was obtained for production here?

A. Again I can't say where we got it, whether it was in Mr. Rusch's hands when it was turned over to the Patent Department or that either Mr. Harrison or Mr. Baer had it.

Q. Was it obtained in connection with your search for documents?

A. Yes, it was.

Q. And is the same thing true of the first notebook, No. 373?

A. Yes.

Q. Is that same thing true of the other two notebooks that you have in front of you?

A. I would say so.

Q. Would you go ahead and identify them, please?

A. The next one is Sanders Associates Engineering Notebook No. 4958. The name on the label is again William T. Rusch and it shows that it was issued on 10-18-67 and completed on 11-29-67.

Q. Do you know where that was obtained for production here?

A. Where I don't know, no.

Q. Would you identify the next notebook?

A. The next one is Sanders Associates Engineering

Notebook 5021, also the name on the front label is William T. Rusch and it shows that it was issued 11-29-67 and completed 3-1-68.

MR. KATZ: Excuse me, could I see the October 18, '67, notebook?

Q. Did you bring or produce or are you producing any documents or things relating to - other documents or things relating to the conception, reduction to practice, testing and development of the alleged patents in suit?

A. Yes.

Q. What are those, please?

A. I have a file here of miscellaneous papers in a manilla folder.

Q. Is there any identification on that folder?

A. On the outside folder it says T. V. game data in chronological order, 1 September, '67, through 8-21-69.

Q. Was that file obtained in your search for documents in response to the request?

A. I assume it was.

Q. Do you know where that was found in the search?

A. Looking in the file, I recognize at least some.

U

of the papers as coming from Mr. Baer.

36 Q. You do not know, though, whether it did come from him or not?

A. I can't say for certain.

37 Q. And what is the next - before you get to that, do you know who assembled the papers in that file that you just identified marked T. V. game data in chronological order?

A. No, I don't.

8 Q. Did you have anything to do in assembling them?

A. I can't recall.

9 Q. Would you go ahead, then, with the next thing?

A. The next one is a manilla folder containing a number of loose papers, there is lots of writing on the outside of this folder. It says Magnavox license support data, signature, which reads R. H. Baer. It further goes on to say T. V. G. data, masters prepared for Magnavox and issued 3-24 and 25-1971. Designs by William Harrison 1-23-40, drawn by Art Fornier 1-23-40. It further goes on to state this data describes the T.V. game "box" gun attachment and golf ^Putting attachment which was demonstrated to G. E., Sylvania, RCA,

RS
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3.
~~Sennit~~, Warwick and Magnavox during 1969 and 1970^{RIS}
and delivered to Magnavox in 3-71 for use with
preliminary design. I cannot read what is in
the parentheses, but after that it says "odyssey"
And then there is another abbreviation of a
word which I can't read.

40 Q. And all of that information was written on the
outside cover of that folder?

A. That is correct.

41 Q. Did you bring any other documents falling in this
same category of paragraph 6 of the attachment?

MR. ANDERSON: Again I might
point out for the record that this is a rather
rough classification by paragraph. Some of them
might fit into other paragraphs or some of the
things we have produced might be considered as
falling within the paragraph also.

MR. WELSH: Yes, I understand.

THE WITNESS: This one is
another manilla folder of loose papers, on the
tab of the folder is listed NFGAA-TVG.

42 Q. Is there any other identifying information on

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the folder?

A. No.

Q. Could you look at, say, the first paper on the inside and see if there is some identifying data there?

A. The first paper in this folder at the top is written color TV notes, again with the date 5-2-67, W. Harrison. Does that call better?

Q. What does NFGAA mean?

A. I can only assume it is some sort of task code number.

Q. Would you identify other documents which you produced as relating to paragraph 6? Before that, was this also, that is, the folder you just identified, NFGAA-TVG, also found in your search for documents in response to the request?

A. Yes.

Q. Do you know where the folder came from?

A. No.

Q. Would you go ahead with the next document?

A. The next document is some principally handwritten notes stapled together and a - the second sheet of paper clipped to that with a paper clip and on top

of the handwritten notes.

Q. Is there any identifying data on the sheet of paper that is clipped to the top of the handwritten notes?

A. Not on the outside. Inside there is typed in apparently on top of it 5.4.2.3, Sanders Data Systems.

Q. What meaning does that designation 5.3.2.3 have?

MR. ANDERSON: It is 5.4.2.3.

MR. WELSH: All right; I am sorry.

THE WITNESS: I can't say for sure, probably a paragraph designation.

Q. May I see it?

A. Yes.

THE WITNESS: I have it.

Q. Do the handwritten notes contain any identification?

A. The first of the handwritten notes, the top one, says or is entitled, apparently, Transcript of Audio Cassette Recording (Side B) made in 1967 for Demo to R. C. Sanders, Jr., and other senior management personnel.

Q. Do you know whose handwriting that is?

A. I can't say for sure.

Q. Do you recognize the handwriting?

A. If I had to guess, I'd say it is Ralph Baer.

Q. Do you know where that document was obtained for production? - unique, F. Masch, 1963 11 11.

A. No.

Q. That document does refer to a recording, does it not? other documents or things did you bring?

A. Yes.

Q. Did your search include the search for that recording?

A. There is a recording somewhere I have seen.

Yes, they do. MR. ANDERSON: I hand the witness a cassette. There is a cassette.

THE WITNESS: I have a recording that we found in the search.

Q. Did you play that recording? - I saw it.

A. No.

Q. Does it have any identifying - does the cassette have any identifying information on it?

A. It says TVG demo, 1967.

Q. What other documents or things did you bring

relating to the conception, reduction to practice, testing and development of the alleged inventions of the patents in suit?

A. I have another brown folder having a label on the front cover thereof which says NKM(TVG) special display techniques, W. Rusch, 1968 (FY1969).

Q. May I see that a minute?

A. Yes. I will open it up inside.

Q. What other documents or things did you bring relating to these categories?

A. Things, I guess the models at the other end of the table. Larger chassis have any identifying information.

Q. Did those have any identifying information?

A. Yes, they do. No. 5.

Q. To the extent that there is identifying information with respect to these models, would you tell us what it is?

A. This one I am holding now says No. 5 on it.

Q. Could you describe just generally what each object is?

A. This is a 15 by 12 or something like that; 18 by 12, metal chassis containing a printed circuit board with a number of electrical components thereon as

well as a number of batteries.

Q. Is there any legend visible on that metal?

A. Yes, it says round spot hockey.

Q. Would you proceed with the other models?

A. There is a model that I am holding now; it is a chassis, that is 7 by 10 or 6 by 10, I am not very good at measurements, containing a number of electrical components inside, a switch and a connector on the outside and cables connecting to two smaller chassis which are covered by brown contact-type paper.

Q. Does the larger chassis have any identifying information on it?

A. Yes, it says No. 6.

Q. On a piece of masking tape affixed to it?

A. Yes.

Q. Would you proceed with the other objects?

A. This is a much bigger chassis on the outside of which is a number of switches and knobs and a wooden handle, a pivotable handle, having some cables attached to the chassis.

Q. Is there any other identifying information?

A. This is identified by a piece of masking tape which

says No. 2 on it.

Q. Are there also labels for various components affixed to the top of the chassis?

A. Yes.

Q. Do you know who put the labels on them?

A. No.

Q. Or assigned the numbers to these?

A. No.

Q. Do you know who would know?

A. I would guess Ralph Baer.

Q. Do you know where these various models or objects were found when they were sought?

A. I think some of them were found in a laboratory used by Mr. Baer.

Q. Do you know who collected them?

A. I believe Mr. Baer was responsible for collecting the models.

Q. Did you assist him in that collection?

A. I don't think so.

Q. Would you proceed to identify the other objects?

A. This one is a flat metal plate bearing - having a piece of masking tape on it with the No. 1.

Q. And are there parts affixed to the plate?

- A. On one side there is a number of resistors and capacitors and on the other side a number of tube sockets and potentiometers. The next one is a metal box having a piece of masking tape which is labeled D-DT accessory (plugs into brown TVG box). Inside there is a number of electrical components and a battery.
- Q. Is the brown TVG box present among these other objects that you haven't identified yet?
- A. I can't be sure. There is a brown box which I haven't identified yet which has a piece of masking tape with the No. 7 written on it.
- Q. Does it have any connector or socket suitable for receiving the plug on the box, on the wire leading from the box which you just described previously?
- A. Yes, there is a socket to mate with a connector on a wire from the box which I just described previously.
- Q. Referring to the front of the box with the No. 7 masking tape label, is there any identifying information there?
- A. There are some strips containing the numbers from 1 to 16. Another strip containing the designation

light pen and a further strip containing the designation TVG.

Q. Are there any parts connected to the box No. 7?

A. Attached to this box are two smaller boxes.

Q. Could you describe them briefly?

A. Each of these boxes have knobs on the top and one knob each on the side.

Q. Are there any legends bearing or having identifying information on those smaller boxes?

A. One of them bears a legend left-hand player, the other bears a legend right-hand player, and each of the knobs bear legends HOR, English, and there are pushbutton switches bearing the legend serve.

MR. WELSH: Off the record.

(Discussion off the record.)

MR. ANDERSON: These two cards that Mr. Williams just handed the witness marked with a pencil note 12 and 13 in circles were in the box also.

MR. WELSH: Now, when you say the box - - -

MR. ANDERSON: The cardboard

box which contained the Box No. 7 with the two smaller boxes connected to it by cable. ,

Q. What other objects are here that you could identify?

A. Well, in this same box there is some colored papers bearing drawings.

Q. How many colored papers are there?

A. I count five.

Q. Could you tell how many of each color there are?

A. Two yellow, a green, an orange and a black.

Q. Are there any other objects in the cardboard box containing the TVG box No. 7?

A. There are some plastic sheets, two plastic sheets, having paper tabs attached to the sheets.

Q. What do the tabs say? Do they contain any information?

A. One of them says move to blue unless both on blue.

Q. And does the other plastic sheet contain a tab; and, if so, does it contain some identifying information?

A. It says, among other things, move to red unless both on red.

Q. Would you continue to identify the other objects which are here?

A. A metal, a small metal plate with a piece of masking tape on it that says CT-P/on box, I would guess No. 7.

Q. Would you go ahead with the other objects?

A. A piece of twin lead bound by a piece of masking tape.

Q. Is there any identifying information on the tape?

A. No.

Q. Would you go ahead with the other objects?

A. The next is a toy rifle with a cable attached to it.

Q. Is there any identifying label or information on it?

A. It bears - the rifle bears the word "Marx."

Q. Would you go ahead with respect to the other objects?

MR. WELSH: Yes.

MR. ANDERSON: That is all.

MR. WELSH: I don't know that this was in the cardboard box, it was laying on it.

MR. ANDERSON: I removed it from the box, but Mr. Williams points out the box is irrelevant. The various things may have

been shifted from box to box in moving them upstairs and downstairs.

MR. WELSH: Mr. Williams, before the witness goes on with the other objects, he was not sure where they came from, do you know where they came from?

MR. WILLIAMS: I know how I first saw them.

MR. WELSH: How was that?

MR. WILLIAMS: Mr. Baer brought them.

MR. WELSH: Brought them where?

MR. WILLIAMS: To the Sanders Patent Department.

MR. WELSH: Did you see him bring them?

MR. WILLIAMS: I saw him bring some models; I am not sure that he brought all of them at one time.

MR. WELSH: But at least some of these that are here you saw him bring to the Patent Department?

MR. WILLIAMS: Yes.

MR. WELSH: Do you know whether any of the models came through any other person than Mr. Baer?

MR. WILLIAMS: I don't know.

MR. WELSH: Would Mr. Baer know?

MR. WILLIAMS: You will have to ask him.

MR. ANDERSON: We don't mind cooperating and I don't mind you asking Jim Williams that question, but I think when you get to that point, you might as well ask the witness.

Q. Well, go ahead with the identification of the other objects, please?

A. We have here another chassis which has a sheet metal piece attached to it and it bears designation No. 4 on a piece of masking tape.

Q. Are there any wires or cables connected to that chassis?

A. Yes, there are.

Q. And are there other objects connected through

or also connected to those cables?

A. Yes.

Q. What are those?

A. There are four boards containing - having potentiometers attached thereto.

Q. Do they bear any identifying labels?

A. One of the boards has pieces of masking tape on it which say V1, H2 left and V2.

Q. And how about the others?

A. Another of the boards says HL and HR. Another one is labeled VR, H1 right and V1.

Q. I believe you said there were four?

A. Did I count them wrong? I guess I only see three now. I must have been mistaken.

Q. Would you go ahead with the other objects?

A. This is a gray box with a hole, a large hole drilled in it, cut in it, and the only identification is inside the box and it says top P2WTRS.

Q. And how does that information you just read appear? What is the form?

A. It is written on with crayon or some other like substance.

Q. Would you go ahead, please?

A. The next one is a box very much like the last mentioned box. It has a piece of tape on it which says top and inside there are some markings which say top. Also it says P-1.

Q. Is there anything contained in each of these boxes?

A. Each of them apparently contains two potentiometers which are ganged together in some fashion and connected to a rod.

Q. Are there also wires leading from the exterior of those boxes?

A. Yes. I know that the designs on the boxes are

Q. Would you go ahead and continue your identification of the other objects?

A. The next object is another toy rifle having a cable attached and having a piece of paper taped to the rifle.

Q. Does the paper contain any information?

A. Yes.

Q. What is that?

A. It says first TV game rifle built 2-26 by W. Harrison - goes with game box No. 2.

Q. Will you proceed with the next object, please?

A. I have another gun which has two sheets of paper

attached to it.

Q. Is there any identifying information on those sheets of paper?

A. One of them says interoffice memo to L. Etlinger/
R. Seligman from R. H. Baer.

Q. Does it bear a date?

A. 7-11-75.

Q. Any further information on that?

A. Well, it says blue bag to L. Etlinger, NHQ-1-601X52460,
for closed room exhibits.

Q. Do you know what the designation NHQ-1-601 means?

A. NHQ refers to the facility that we are in, the
building. NHQ-1 refers to this building. 601 refers
to a room on the 6th floor.

Q. That is the Patent Department?

A. Yes; the envelope have any other information.

Q. What do the letters NHQ stand for?

A. Nashua Headquarters.

Q. Do you know what the final No. 52460 means?

A. Telephone extension. R. H. Baer, 1-4211.

Q. Is there any other information contained on the
other sheet attached to that gun?

A. It says 1967-TV game combination target rifle and

(odd/even) decoder light gun - used for demos to teleprompter with game unit No. 3.

Q. Are there any more objects?

A. No. I am sorry, there is. I have another chassis having a piece of masking tape on it with the No. 3 written on there. The chassis has a cable attached to it.

Q. Are there also knobs on the chassis?

A. There are a number of knobs on the chassis.

Q. Are there any other objects?

A. There is a package containing some large papers, some plastic sheets with miscellaneous things drawn on the sheets.

Q. How many plastic sheets are there?

A. I count thirteen.

Q. Does the envelope have any identifying information on its exterior?

A. It says TVG. And below that it says 1966, '67 and '68 (overlays used in). It says to William Harrison 1-23-40, 1-1-6, from R. H. Baer, 1-2300.

Q. What does the designation 1-23-40 mean?

A. I assume it is a particular department or group within the company.

Q. And what does 1-2300 mean?

A. I assume the same thing.

Q. Were there any other items contained in that envelope besides the plastic sheets?

A. Yes, there is a little envelope which has some smaller plastic overlays or some more plastic something, plastic overlays, I guess, small ones.

Q. How many of those are there?

A. Five.

Q. What does the 1-1-6 designation on the outside of the large envelope mean?

A. I don't know.

Q. Would you go ahead and describe the other items that were in the large envelope?

A. Some large sheets of paper, a number of large sheets of paper with markings on it. There is writings on each sheet.

Q. Referring to the top of each sheet, is there some identifying information on those?

A. The first sheet says TVG-1, the second TVG-2, the third TVG-3, the fourth TVG-4, the fifth TVG-5, the sixth TVG-6, the seventh TVG-7, and the eighth TVG-8.

- Q. Do those sheets also at the top refer to one or more overlays with numbers following?
- A. The top sheet says overlay 1 and overlays 3, 4. The next one says overlay 1 or overlay 2, both of which are crossed out and below that 1, 3 and 4. The third one says overlay 3. The fourth one says use overlay No. 6 first, O.V. 5 is harder. The next sheet says overlays 5, 6. The next one overlay No. 7.
- Q. The last one that said overlay No. 7 was what?
- A. TVG-6. TVG-7 says no overlay or overlay 1, 3, 4. And the sheet identified as TVG-8 says overlay 1, 2 and I can't tell, I don't know what it is, the next number.
- Q. What other items were in the large envelope?
- A. A light brown piece of paper having two cutouts and one chart which says penalties, another chart which says pick and score.
- Q. Would you go on with the next item?
- A. The next one is a blue sheet which has a drawing on it of some flowers and a cutout.
- Q. The next object?
- (Discussion of the object.)
- A. The next one is a yellow sheet which has a drawing

of a house and a fireman on it and some cutouts.

Q. Are there any more items in the large envelope?

A. No.

Q. Are there any other items which have been produced in response to the category 6 relating to conception, reduction to practice, testing and development of the alleged inventions of the said patents?

A. I believe that is it.

MR. ANDERSON: I would like to mention again that we are not saying that other documents and things produced under other sections would not come within this category. One that comes to mind is that one might take the position that some of these patent applications are in the category of reduction to practice. I wouldn't want someone to later claim that we didn't put it in the category and therefore it is excluded.

MR. WELCH: I understand.

MR. ANDERSON: All right; fine.

MR. WELSH: Off the record.

(Discussion off the record.)

Q. (By Mr. Welsh) The next category is stated in paragraph 7 of the subpoena and of the attachment to the subpoena and the notices referring to records mentioned by the plaintiffs in their response to Interrogatory 11 of defendant's CID. This relates to results of Magnavox's or Sanders' examination or operation of machines of CID. Now, there were some documents specifically, I believe the notebook of Mr. Baer which includes reports regarding the examination.

MR. ANDERSON: As far as I know, you have everything coming within your category 7 already produced in response to other categories. You can ask the witness, but that is my understanding from our search.

Q. Is that correct, Mr. Seligman?

A. To the best of my knowledge, that is true.

Q. The next category is that of paragraph 8 regarding the press release relating to the filing of this action issued by Magnavox, and notes, correspondence and any other documents relating thereto. Are there any other documents, Mr. Seligman, responsive to this category that have not already been produced?

A. I don't believe so.

Q. And the next category relating to communication - paragraph 9 of the attachment - to any of the named persons relating to the action or the patents. The persons named being Mr. Dimitri Allegretti - -, -

MR. ANDERSON: You might as well take them one at a time. As far as I know, we have identified - - -

MR. WELSH: Yes, in respect to those communications, your responses indicated that there were two letters which were identified in the responses and that you would not produce them, claiming attorney-client privilege.

MR. ANDERSON: Right, and, as you know, he did appear at one of the hearings in the matter on behalf of the plaintiff.

MR. WELSH: Has he entered his appearance yet?

MR. ANDERSON: I don't know whether he has or not. I didn't check it out. Perhaps he was waiting for me, I don't know.

MR. HERBERT: Who was he

representing?

MR. ANDERSON: The plaintiffs.

MR. HERBERT: Both plaintiffs?

MR. ANDERSON: Yes, he is just co-counsel with us, that is all.

Q. Subparagraph B, communications with Mr. Richard C. Martin at the address in England. All of these next sections, B through H, are addressees in England. You suggested taking them one at a time?

MR. ANDERSON; I think you can group B through H and I can state with respect to all of those, any documents which exist, to my knowledge, would be in Magnavox's files and not Sanders' files.

Q. That was to be my question. Do you know of any documents in the Sanders' files, Mr. Seligman, involving or relating to communications between Sanders and the parties named in the sections in subparagraphs B through H of paragraph 9?

A. I can't recall any offhand, unless in our files, 637 there might have been.

Q. What is your file 637?

A. I handed over the Magnavox correspondence file.

MR. ANDERSON: That is on the table in front of you, Mr. Welsh.

THE WITNESS: There may be copies of some correspondence to one of these parties, I am not sure.

Q. Mr. Anderson just referred to a folder, I believe you were referring to this folder, Mr. Anderson.

MR. ANDERSON: Well, I was referring to the pile which is in front of you which I might state are the documents which we told you yesterday we would try to produce by this morning and we did just produce them just prior to beginning this session this morning. Those documents are the correspondence files marked Magnavox maintained by Sanders, as I understand it. Many of them are confidential. They do have the file No. 637 on at least several of the folders that I see in front of me.

MR. WELSH: The particular folder that was lying on top of those I believe was produced before, was it not, Mr. Williams, although it now bears a number file 637, there is a

file 687 designation which is crossed out?

MR. WILLIAMS: You are correct, that file was produced before.

MR. WELSH: Could we have this file identified? I don't think it has been produced in response to any category?

MR. ANDERSON: We don't know that it fits in any category.

THE WITNESS: It is a file of patents that I don't see any relationship to any of the categories or anything to be produced today.

Q. Do the patents bear any handwritten notations?

A. Yes, they all bear the notation file 687.

Q. And does that notation also appear on the front of the file?

A. Crossed out. They are.

Q. Is there some other notation on the front that is crossed out?

A. Yes, it says Magnavox Flexprint Lucas.

Q. What does Magnavox Flexprint mean?

A. I have no idea. Magnavox is one of the plaintiffs, Flexprint is, I believe, a trade mark of Sanders Associates. The relationship between the two on

the file cover, I do not know what it means.

Q. With respect to what goods or services is it a trade mark?

A. Flexible printed circuits.

Q. Is that a product of Sanders?

A. Yes. It's back there in the folder.

Q. What does Lucas mean?

A. To me, it means a company which we have licensing arrangements with.

Q. Do those patents relate to your Flexprint product?

MR. ANDERSON: I might state for the record that we produced this folder just

because it was with the Magnavox folders and I

believe all the patents are Magnavox patents.

We can offer no other explanation for having them here or what they are.

MR. KATZ: Are they Magnavox patents?

MR. ANDERSON: On their face, they are owned by Magnavox.

Q. Going back to category 9 and subparagraphs B to H of that, I believe you stated that communications with named parties, there might be

some in the Magravox correspondence files?

A. If we have such communications, they will be in that file, I believe.

Q. You did not check the file specifically for such communication?

A. I didn't look through that file.

Q. The next category, paragraph 10 of the attachment, refers to documents identified in plaintiff's response to interrogatory 15 of the defendant's CID, which I believe related to documents prepared by employees or agents of plaintiffs concerning CID games alleged to infringe. Do you have such documents or have they been produced already?

A. I see a listing in response to what I assume is interrogatories, a number of documents, they look like Magnavox documents and not Sanders documents. I would doubt that we have any of those.

Q. With respect to documents of Sanders, do you have or have you produced documents responding to this category?

MR. ANDERSON: Well, Mr. Welsh, again in a very broad sense one might place documents that have been produced relating to

Chicago Dynamic Industries, Inc., in this category without special regard to the language "which is alleged to infringe patent 3,659,284." But anything relating to Chicago Dynamic Industries, Inc., which we found among the files of Sanders has been produced.

Q. So far as you know, have all of the documents relating to Chicago Dynamic Industries been produced?

A. To the best of my knowledge, yes.

Q. The next category is all drawings and/or circuit diagrams of the alleged inventions of said patents made up to and including their respective reductions to practice. So far as you know, have you already produced all of the Sanders documents which would fall in this category?

A. I believe we have.

Q. Paragraph 12 of the attachment refers to all documents offered by plaintiffs in plaintiff's response to interrogatory 32 of defendant's CDI. I believe such interrogatory related or called for documents relating to the conception, development and testing of devices of the 284 patent in suit.

So far as you know, have all such documents of Sanders been produced?

A. I believe so.

Q. Paragraph 13 of the attachment calls for documents or things relating to the first disclosure of the alleged inventions of said patents by Sanders to a person not associated with Sanders. So far as you know, have all documents or things falling in this category been produced?

A. I believe so.

Q. The next category set forth in paragraph 14 is the disclosure and/or demonstration of the alleged inventions of said patents to the following companies and any agreements or communications or memoranda relating thereto. The response to that corresponding paragraph of Midway's request for documents contained an objection with respect to the documents containing royalty rates or proposed royalty rates, and under the protective order that objection apparently has been lifted. So far as you know, have all of the documents of Sanders falling in category 14 now been produced?

A. I believe so.

As I understood it yesterday, the confidential documents were actually produced.

MR. ANDERSON: Yes, to the best of our knowledge, you have them all at this point in time.

Q. The next category 15 calls for the first documents relating to the first solicitation and the initial order for the sale of apparatus by plaintiffs embodying the alleged inventions of said patents. Now, the response to the request states, "The invoices and other relevant documents relating to delivery by Magnavox to its customers of such apparatus - - -"

MR. ANDERSON: I think you skipped a number.

MR. WELSH: I am sorry.

Q. The response to that paragraph was, "Plaintiffs will permit inspection and copying of the documents requested in this paragraph." Are there any Sanders documents falling within that category?

A. To the best of my knowledge, there are none.

MR. WELSH: Mr. Anderson,

where will those documents be?

MR. ANDERSON: Well, to the best of my knowledge, there are none in Sanders' files either that I am aware of. If there are any, they would be in Magnavox's files.

MR. WELSH: And where are those located?

MR. ANDERSON: Well, I think you have probably seen them already. To the best of our present knowledge, they are in Chicago. You have seen some of them, there are some of them that have been available to you that you have not yet seen. That you have not yet taken the opportunity for seeing and will be made available at any time that you want to come over and see them.

MR. KATZ: I wasn't aware that there was anything being offered that we haven't seen.

MR. ANDERSON: I understand from Mr. Williams that there are or at least may be some you have not seen.

Q. Before going to the next category, Mr. Seligman,

do you know what file 687 related to or what the title of that file was?

A. No.

Q. Paragraph 16 of the attachment states, "The initial delivery on any order for the sale of apparatus by plaintiffs embodying the alleged inventions of said patents." Are there any Sanders documents falling in that category?

A. To the best of my knowledge, there are none.
category of another. MR. WELSH: Mr. Anderson, plaintiff's response to that paragraph of the request for documents which are erroneously took out of order a moment ago states that, "The invoices and other relevant documents relating to delivery by Magnavox to its customers of such apparatus are maintained at the Magnavox manufacturing facility in Greenville, Tennessee, and are filed according to customers. Defendant Midway is invited to examine those invoices and related documents in Greenville and select the ones relating to the initial of the referenced apparatus. Plaintiffs object to this request insofar as it seeks to have the requested documents produced for inspection and

copying at Fort Wayne, Indiana." Do you persist in this objection?

MR. ANDERSON: I think in fact we have since answering your request obtained copies of the initial documents and they have been produced for you in Chicago.

MR. WELSH: Are they among the group that we have not seen?

MR. WILLIAMS: Either in one category or another. They were either produced in August, I believe it was, or are available there now.

Q. The next category 17 calls for, "The documents identified in plaintiff's response to Interrogatory 62 of defendant CID." I believe those documents relate to the validity of the 284 patent in suit." Plaintiff's response - first of all, Mr. Seligman, so far as you know, have all Sanders documents relating to that category been produced?

MR. ANDERSON: Well, Mr. Welsh, they have either been produced or identified in our response to production of

documents filed with the court on August 11, 1975.

Q. Category 18 called for prior art cited during the prosecution and examination of said patents and of all corresponding foreign patents and patent applications. There was an objection to producing some of those because of the possibility of notations on them, but an offer was made to make an attempt to provide them in Midway was not able to obtain copies after a reasonable effort. There was a further objection to some of these documents in this category and a listing in the response of specific documents which would not be produced, a list of some thirteen. Do you persist in a refusal to produce those documents, Mr. Anderson?

MR. ANDERSON: Well, Mr. Welsh, paragraph 18 only requests prior art documents, we stand on our offer to provide you with any that you can't find anywhere else.

MR. WELSH: Well, I am talking about the documents that are listed in your response and identified with the statement that they would not be produced. I am just asking if

you persist in the refusal with respect to those thirteen identified documents?

MR. ANDERSON: Yes, we have identified those as documents not subject to production because they are attorney-client privileged documents or work product documents properly excluded under Rule 30. And as Mr. Williams points out, some of these are not Sanders documents, of course, they would not be produced today, in any event, though they are foreign applications.

MR. WELSH: We understand that. The next category in paragraph 19, subparagraph A, calls for the patents and applications identified under A through U in plaintiff's response to interrogatory 81 of defendant CID. The interrogatory 81 asks for identification of patents and applications, U. S. and foreign, on improvements of the subject matter of the patents in suit and there were identified in that response certain applications, some twenty-one applications on improvements. Now, the response to the corresponding paragraph of our request earlier was, "Plaintiffs object to this paragraph as requesting

documents which are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. However, in order to advance the resolution of this action, plaintiffs will produce the patent and patent applications identified as items A and O through U and plaintiff's response to interrogatory 81 of defendant CID. It is noted that the patent applications there identified as Items B through N are foreign applications corresponding to that of Item A." First of all, have there been produced here, Mr. Seligman, the patent or patent applications which have been offered to be produced, specifically those identified as Items A and O through U in plaintiff's response to Interrogatory 81?

MR. ANDERSON: Mr. Welsh, it is my understanding that Items O through U are not Sanders items.

MR. WELSH: You can't tell from the description.

MR. ANDERSON: That may be.

MR. WELSH: That is why I am

asking the question.

MR. ANDERSON: That is my understanding.

MR. WILLIAMS: And O through U have previously been produced for you in Chicago.

Q. And how about Item A which is U. S. application Serial No. 356000 filed May 29, 1973, for "pre-programmed television gaming system" by Ralph H. Baer?

A. I don't know whether we brought that one with us. Did I turn that over to you?

MR. ANDERSON: Mr. Welsh, it is our understanding with respect to Item A, that it is a pending patent application on what certainly could be considered an improvement and we therefore identified it. We will let you see it. It is not in the room, I don't believe. We will permit you to see it under the protective order because it is pending. I also might say I think it is irrelevant.

MR. HERBERT: Are all the foreign applications pending?

MR. ANDERSON: We have only produced copies of foreign cases and they are foreign cases that grew out of patents in suit. I think some of them are pending and some are not.

MR. HERBERT: No, I am referring to Items B through N referred to here which are apparently the corresponding patent applications or corresponding to Item A and I am asking, depending on how long they have been filed, maybe some of the foreign ones have already been issued?

MR. ANDERSON: I don't know the answer to that.

MR. SELIGMAN: I would guess, in fact I am pretty sure that at least one of the foreign applications is issued. I think it has been.

MR. ANDERSON: We will find out. I was just advised that the U. S. case was pending and, therefore, it seems appropriate to have it under the protective order. If the foreign patent was issued, certainly you would have the disclosure which is all you want.

Q. Did you produce the foreign applications identified as Items B through N of plaintiff's responses to defendant CID Interrogatory No. 81? A. I

A. I don't believe we did.

MR. WELSH: There was an objection to that production, do you persist in that objection, Mr. Anderson?

MR. ANDERSON: Yes, we persist in the objection, but, as I say, I think we will show you the documents under the protective order if you want to see that application.

MR. WELSH: Where are those applications? The foreign applications B through N.

MR. ANDERSON: I would presume that the specifications in all of them, A through N, would be substantially the same, but for the foreign language translation problems. I think we would produce them all under the protective order if you want to see them and if your Japanese is good enough to compare them.

MR. WELSH: Well, by all, you mean just the specifications?

MR. ANDERSON: A through N, the patents and patent applications, yes.

MR. WELSH: Well, I believe the document request as well as the attachment to the subpoena and the notices goes beyond just the applications.

MR. ANDERSON: Yes, and our objection to paragraph 19 contemplates that, I think.

MR. WELSH: Well, what are you going to produce, all of the documents constituting, referring or relating to these applications and patents where they have issued including specifically in subparagraph B of category 19, all other documents relating to the prosecution or examination of each such patent and application?

MR. ANDERSON: No, as we set forth in our response of August 11, 1975, we will produce under the protective order, "The patent and patent applications identified as Items A and O through U in plaintiff's response to Interrogatory 81 of defendant's CID."

Q. And none of the other documents?

MR. ANDERSON: We will produce the applications, the foreign counterpart applications B through N under the protective order also, if you wish to see those.

MR. WELSH: And also you will include documents relating to the examination and prosecution of each patent application?

MR. ANDERSON: No.

MR. WELSH: So you are refusing, then, to produce all the documents identified in paragraph 19 except the patents and applications themselves?

MR. ANDERSON: I think our language in the August 11, 1975, response is clear. Yes.

MR. WELSH: Well, okay, I just want to make sure I understood it. The next item as set forth in paragraph 20, "Sales invoices and other records of Magnavox evidencing the monthly sales by units and dollar amounts of its apparatus embodying the alleged inventions of said patents from the initial sale to date."

MR. ANDERSON: This request is

directed specifically to records of Magnavox.

MR. WELSH: True. While we are together, however, I wanted to determine about the production by Magnavox of those. There was an objection to the request insofar as it requested production of documents in Fort Wayne. The documents we requested being primarily located at the Magnavox facility in Greenville. The response went on to state that the plaintiffs would produce the documents after entry of an appropriate protective order and at the location where the documents are usually and customarily retained. Have those Magnavox documents been made available, Mr. Anderson?

MR. ANDERSON: No, our position is as set forth in our August 11, 1975, response to your request for production. However, we have provided you in Chicago with summaries of these documents. The documents themselves are, and as are the summaries, subject to a confidential protective order. To produce the documents you have requested in Chicago would be unreasonable and burdensome. You can see them, if you insist, in Greenville.

MR. WELSH: Do you know, Mr. Williams, whether the summaries are among those that have been produced or are now available?

MR. WILLIAMS: I believe that they are among the documents that were produced in August.

MR. KATZ: Excuse me, I am pretty sure Jim is right. Strictly from memory, I believe that I think I did inspect those in August, but I have a catalog of documents I think from that inspection which would determine whether or not that document was available, but, in any event, it would be available now?

MR. WILLIAMS: Sure.

MR. ANDERSON: Mr. Welsh, just glancing at the request, I think we can skip over 22 and 23, they also request Magnavox documents and this witness, I think, is not qualified to testify on those paragraphs and the answers as set forth on August 11, 1975, were the same and, as I understand it, are the same today as our answer to paragraph 21.

MR. WELSH: Off the record.

(Discussion off the record.)

Q. Mr. Seligman, I was about to ask, although paragraph 20 sets forth sales and invoices and other records of Magnavox, I asked if Sanders received any copies of such documents which then would be subjected to production here, I believe?

A. Sanders, to my knowledge, did not receive any documents showing the monthly sales by units and amounts.

Q. And has Sanders received copies of any business records of Magnavox as set forth in paragraph 21 evidencing monthly advertising expenditures of Magnavox?

A. No.

Q. And I asked the same question with respect to business records of Magnavox evidencing monthly sales expenditures as called for in paragraph 22 of the attachment?

A. No.

Q. Also with respect to paragraph 23, has Sanders received any copies of Magnavox records showing

numbers of units and times of manufacture of its apparatus embodying the alleged inventions and patents?

A. No.

MR. WELSH: Mr. Anderson, with respect to your comments regarding paragraph 21, 22 and 23, it is stated that plaintiffs object to the paragraph as requesting documents insofar as it requests documents in Fort Wayne, which documents are not usually and customarily maintained there. I would like to ask at this time where are the documents which are identified in these paragraphs located?

MR. ANDERSON: With respect to which paragraph?

MR. WELSH: 21, 22 and 23.

MR. ANDERSON: I don't know the answer to that in its entirety. I believe there are some in Greenville, Tennessee, and there are some in Fort Wayne, Indiana, and there may be some elsewhere, but those are the two places that I believe there might be documents responsive to any one of these three paragraphs.

MR. WELSH: Well, Mr. Briody who represents and is house counsel for Magnavox is here, perhaps he knows and could tell us at this time.

MR. ANDERSON: Well, I would like to get this witness finished and out of here and the subject of Magnavox's production should have been handled some time ago, it seems to me. We filed our response on August 11. The search was done before that and I don't remember and I don't think it is fair to press him to try to remember during the middle of a deposition of Sanders.

MR. WELSH: Well, will you furnish us with that information?

MR. ANDERSON: At an appropriate time, yes. Ask us another time or write us a letter.

MR. WELSH: Do you know the information now?

MR. ANDERSON: I do not, I have told you all I know.

MR. WELSH: Will you do it

then in response to a letter?

MR. ANDERSON: Certainly.

MR. KATZ: Maybe Mr. Briody would know.

MR. ANDERSON: I would like you to finish with Mr. Seligman. He has been on the stand for almost two days to identify documents and models, he does have a job and has other things to do.

MR. WELSH: And I take it that you refuse to permit Mr. Briody to tell us if he knows the answer to these three questions regarding location of these specific documents?

MR. ANDERSON: I would like you to finish with Mr. Seligman.

MR. WELSH: You are not going to ask Mr. Briody to give us that information?

MR. ANDERSON: That is correct.

MR. WELSH: We are here.

MR. ANDERSON: We will be here again, Mr. Welsh, don't worry about it.

MR. WELSH: I am sure we will.

Very well, if you refuse, you refuse.

Q. Turning to paragraph 24 of the attachment, Mr. Seligman, requesting business records and documents of Sanders Associates evidencing commercial success of the alleged inventions of the 284, 285, 480 and 058 patents involved in these matters. The response was, "Plaintiff Sanders has no such business records or documents other than those documents which merely reflect the information referred to in request paragraph 20." Have those documents which merely reflect the information referred to in request paragraph 20 been produced?

A. As I previously testified, we do not have documents evidencing monthly sales and dollar amounts of apparatus embodying the alleged inventions.

MR. ANDERSON: Mr. Welsh, when we prepared that response, all we meant was that the documents which have been produced for you today here relating to reports to Sanders might be referred to as relating on that request and you have all of those documents.

MR. WELSH: Thank you.

Q. Paragraph 25 sets forth documents with respect to "The preparation, filing and prosecution of the application for reissue of patent 3,659,285 and any other reissue applications relating to said patents." That paragraph, the corresponding paragraph of the request was responded to by plaintiff's objection to the request insofar as it requests documents for which a proper claim of attorney-client privilege or attorney's work product may be made and listed and identified some twenty-nine documents; have all other documents than these twenty-nine identified documents been produced? That is, those which have been called for in paragraph 25?

A. I believe we produced the reissue application for patent 3,659,285 as well as - - - I don't understand what you mean by said patents and the rest of that.

Q. Said patents in an earlier portion I believe refers to the patents involved in this litigation.

A. I believe we have produced them.

Q. That would be the 284 reissue application as well as 285?

A. I believe we produced both the 284 and 285 application.

Q. In their entirety except for these letters set forth in the response to the paragraph?

A. I believe so.

MR. ANDERSON: Mr. Welsh, I understand the applications were first produced for you here on a trip in July, then further documents relating thereto were produced in Chicago in August and those constitute all of the documents relating to those two reissue applications except for the documents which have been withheld on the grounds of privilege and work product.

MR. WELSH: And there are not subsequent documents that have been withheld that are not listed here in the response to paragraph 25?

MR. ANDERSON: I can't tell you that; I don't know the answer to that.

MR. WELSH: Well, would you determine that and if there are additional documents which have been or which have not been produced for any reason, would you advise us as

to such documents, identify them and give us the reason?

MR. ANDERSON: All right.

MR. WELSH: Is that information available here?

MR. ANDERSON: Not in this room here.

MR. WELSH: But in this location at Sanders?

MR. ANDERSON: In part at least. It would only be documents that Sanders might have.

MR. WELSH: Well, I am wondering when we might expect you to furnish us with this information?

MR. ANDERSON: When we have a chance to look it up and advise you. Seeing it will be a writing, I doubt if we can do it in a matter of minutes or anything of that sort.

MR. WELSH: Well would it be possible to check with respect to those documents that are here?

MR. ANDERSON: To the best

of our knowledge, there is nothing, but we will in due course check.

MR. WELSH: Well, I am asking with respect to the documents at least which are here, could that check be made sometime before we leave or finish up next week?

MR. ANDERSON: I would think so.

Q. Paragraph 26 referred to the work assignments of each of the named inventors of said patents, other than the alleged inventions of said patents, prior to August 21, 1969, wherein such assignments involved or related to the use of a cathode ray tube and circuitry for causing images to be displayed on the CRT and for detecting or responding to coincidence of such images. The response is that there are no such work assignments or any documents related thereto. Did you recheck to determine whether there were such work assignments in your search following receipt of the subpoena?

MR. ANDERSON: I object, we didn't consider the subpoena of any effect other than to the notice of taking this deposition.

If you mean the notice of taking the deposition,
I have no objection.

MR. WELSH: Well, the notice.

THE WITNESS: We did not
recheck because it was referred to work prior
to August 21, 1969.

Q. Did you check earlier in attempting to obtain
information to respond to these requests?

A. I am sure we must have because we certainly
did answer it that there were no work assignments.

Q. Were records of work assignments of the inventors
available? That is, assignments prior to
August 21, 1969, available at the time that you
made the search for information to respond to
the request.

A. Actual records are only kept by the company regarding
certain projects or time that they charged to
certain projects. I don't know and I haven't
checked if anything is available prior to this time,
but it is a terrible burden to check work
assignments because I believe they are filed on
a month-by-month or week-by-week basis and all
they do is give task codes or some coded designation

of a job.

Q. Do you know how that information is filed?

MR. ANDERSON: Objection;
what information? About work assignments falling
within the definition of paragraph 26?

MR. WELSH: I am asking if
information regarding work assignments of the
inventors prior to August 21, 1969, exists or
existed at the time that the response to the
request for documents was being prepared; and then
after finding that out, I expect to inquire as
to whether that information was checked to see
whether the assignments of the inventors involved
the further definition of paragraph 26.

MR. ANDERSON: Well, I object, I think you have asked both of these
questions and the witness has already answered both
of those questions.

MR. WELSH: I believe he
stated that the work assignments, information
regarding that, is filed on a month-to-month or
week-by-week basis.

MR. ANDERSON: He went farther

than that and he said by codes and there is no way to search it.

MR. WELSH: Well, I didn't understand that he said there was no way to search it.

MR. ANDERSON: Well, I think he said it would be an impossible burden or something like that. You can have it reread if you want to. Mr. Reporter, can you read back that response?

(Whereupon, the requested response was read by the reporter.)

MR. WELSH: You are correct in that the witness did answer the question, that he did not check prior for those records, prior to this date.

You have MR. ANDERSON: And that it is a terrible burden.

MR. WELSH: You said that it was an impossible burden, I do believe.

MR. ANDERSON: I don't distinguish the two in any significant way.

Q. The next paragraph 27 involves drawings and specifications for Magnavox Model 1TL200; does Sanders have any such document?

A. In searching for the documents, I couldn't or didn't receive such documents.

MR. ANDERSON: Documents in response to paragraph 27 have been produced by Magnavox.

MR. WELSH: I was just asking to be complete about whether we had such.

Q. Paragraph 28 of the attachment sets forth all documents relating to the design, construction, operation, testing and demonstration of the Sanders models referred to in plaintiff's response to defendant Midway's Interrogatory No. 56, which relates to the prototypes and it was stated that those models would be produced for inspection by defendant. You have produced some models and identified them this morning, are those the models which were referred to in the response to Midway's Interrogatory No. 56?

A. Yes.

Q. Are there any other models of Sanders relating to the first prototype of a video or television-type game device developed by or for the Plaintiff Sanders?

A. To the best of my knowledge, there are not.

Q. Paragraph 29 sets forth, "All documents and things requested to be identified in "Defendant Midway's first set of interrogatories to Plaintiff Sanders Associates, Inc. (Nos. 1 through 81)" and "Defendant Midway's first set of interrogatories to plaintiff the Magnavox Company (Nos. 1 through 81)" and either identified or offered to be produced in plaintiffs original and supplemental responses to such interrogatories, including Interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, 11; 12A, B, C, D, E, 20, 22, 23, 42, 49, 56, 75, 76, 77, 78, 79, 80 and 81." The interrogatory of Midway No. 4 asked for identification of documents relating to the preparation of filing of the applications for 284, 285, 480 and 058 patents and the response was see the produced documents. Have those documents already been produced?

A. All these documents, as I have said a number of

times today were gathered by my associates and myself and handed over to our counsel, Mr. Williams.

Q. There is overlap here with some of the requests also, I just want to be sure that we have covered everything here. The Interrogatory No. 5 related to the prosecution of the 284 patent and is the same thing true with respect to those documents?

A. Yes.

Q. And six refers to the 285 patent, have all those documents been produced, too?

A. They have been given to Mr. Williams.

MR. WELSH: And do I understand correctly, Mr. Williams, that they either have been produced or any documents withheld have been identified?

MR. ANDERSON: We took the documents that were delivered to us and went through them and compared them to the paragraphs and tried our best to fit them into the paragraphs and produced everything that should be produced other than something that was not produced because of attorney-client privilege or attorney's work product and that has been specified.

MR. WELSH: And is that true with respect to all interrogatories listed here, 4, 5, 6 and so forth in paragraph 29?

MR. ANDERSON: Well, I believe so, let me consult with Mr. Williams. I think the only other proviso would be without checking each one of these interrogatories, there may be some where we specifically raised an objection in our response of August 11, 1975, and you would have notice of our objection and withholding based upon our documents filed August 11, 1975.

MR. WELSH: So that in general, the documents have been - the documents identified in these interrogatories have either been produced, objected to for reasons other than attorney-client privilege or work product?

MR. ANDERSON: It is fully set forth in our paper which we filed on August 11.

MR. WELSH: And if objected to on the attorney-client privilege or work product basis, they have been identified, those which will not be produced for those reasons have been

identified?

MR. ANDERSON: Those have been identified on a document-by-document basis with date, address or addressee or other appropriate identifier.

MR. WELSH: Now, there was a statement in response to paragraph 29 that there were no documents identified or offered to be produced by plaintiffs in response to Midway's Interrogatory 11. That, I believe, asked for identification of all foreign applications filed corresponding to each of the four patents which I just listed indicating the respective correspondence, respective patent numbers and the references cited during the prosecution. There was an objection in the original answers to the producing of documents with respect to the 480 and 058 patents, but then there was a listing with patents corresponding; that is, foreign patents corresponding to use 3,659,284 and 585, so it appears that this statement and the response regarding - that is, the response to paragraph 29 of the request and the attachment stating that no documents were

identified in response to Midway's Interrogatory 11, appears to be an error.

MR. ANDERSON: No, we didn't try to specifically identify a specific document, we identified a patent application and supplied the information that was requested in the interrogatory. We did not offer to produce the document in response to Interrogatory 11, we just gave the information that was requested.

MR. WELSH: Well, I believe there were documents identified in that response, were there not?

MR. ANDERSON: Well, the interrogatory is a request for identification.

MR. WELSH: Yes, and the request for production was to produce the documents either identified in - well, the request was to produce all the things requested to be identified in those specific interrogatories. I think you have done it.

MR. ANDERSON: We identified foreign patent applications corresponding to the 584 and 585 patents.

MR. WELSH: Right, in response to our Interrogatory No. 11.

MR. ANDERSON: That is correct.

MR. WELSH: And you did a similar thing in your supplemental answer when you answered that interrogatory with respect to the 285 and 058 patent..

MR. ANDERSON: That is correct.

MR. WELSH: And paragraph 29 of the attachment and the request asks for all documents requested to be identified and in all of the interrogatories, but specifically setting forth 11 and that is either identified or offered to be produced in an original and supplemental responses to the interrogatories.

MR. ANDERSON: And we have produced the applications which have been identified, if that is your point.

MR. WELSH: Well, that is my point. The response states that there were no documents identified.

MR. ANDERSON: I think we are hung up on semantics. We were identifying a patent application in a very abstract sense. We weren't thinking of that as a single particular document.

MR. WELSH: Would you call it a thing?

MR. ANDERSON: I don't care what you call it. It is a file number as much as a document when we answered. We listed all patent applications by country and number. We did not think of them as documents, but merely as an identifying number. We have produced copies of the patent applications which bear those numbers and I don't know how I can say it any more specifically than that. So if you want to say our answer was an error in that a patent application is not only a number, but it is also a piece of paper, I agree with you.

MR. WELSH: Well, I think it certainly is a thing and we called for documents and things, but apart from that - - -

MR. ANDERSON: But we produced

it whether it is a document or a thing or whatever it is.

MR. WELSH: That is what I was leading up to. That there are identified in your responses to - your response and supplemental response to Interrogatory 11 - certain foreign patents or patent applications which correspond to the four patents involved here, the 584, 585, 480, and 058 patent and you have produced a large number of foreign application files which we have inspected. We did not make a check of those files against those listed in your response and supplemental response to Interrogatory 11. I would rather than have Mr. Seligman go through those application files folder by folder and identify them, can we have the same stipulation with respect to these that we had earlier regarding the applications identified in the response to CID Interrogatory No. 81; namely, that you have produced all of these files of the foreign applications corresponding to those listed in your response to Interrogatory 11 and supplemental response to Interrogatory 11?

MR. ANDERSON: Yes, it is something in the order of 80 to 100 files, I haven't counted them.

MR. WELSH: Right and this is where I wanted to avoid going through them all with Mr. Seligman.

MR. ANDERSON: Right, as far as I know, we have produced them.

Q. Now, I had another request with respect to Interrogatory 12.

foreign patent MR. ANDERSON: Interrogatory 12?

MR. WELSH: Right, and the response in our document request relating to Interrogatory 12. Those documents related to the foreign patent applications and there are five sections. The first paragraph A, all communications with respect to foreign patent offices. It was indicated that those would be produced. All communications between the inventors, Sanders Associates and foreign associate or agent representing them in the respective foreign patent offices; and the response there was see the produced documents. And the following listing,

A through BB, certain other letters or other communications, they are all letters, apparently, with various foreign associates of Sanders in handling these various applications. With respect to category C, which was all memoranda relating to the preparation, filing or prosecution of all such foreign patent applications, the response was see the produced documents. Under D, all communications with outside counsel relating to the preparation, filing and prosecution of all such foreign patent applications and the response was, see the produced documents. And all other communications relating to such foreign patent applications and patents which issued from said applications and/or any attempts to enforce or license any of such foreign applications or patents; and again the response was, see the produced documents. Now, those were the original answers with respect to the 284 and 285 patents. The supplemental answers regarding 480 and 058, A through E, was see the produced documents. In other words, as I understand it, except for the objection to the original Interrogatory 12 because

it related to the 480 and 058 patents, there was no objection to any of these documents and they were offered to be produced. Then with respect to 480 and 058, similar answers were given in the supplemental response to Interrogatory 12. Now, have those documents been produced? I find that subsequent to the interrogatory answers and in response to our request for production of those documents, you have now withdrawn some as being subject to the claim of attorney-client privilege or attorney's work product and you have listed some fifty -two letters. You also are now objecting to subparagraph E for the reasons stated in your response to subparagraph 3C of our request which was the objection that the documents were neither relevant nor reasonably calculated to lead to admissible evidence. Although you stated that you would produce the other documents, I would like to ask first, Have you produced all of the documents which you said you would produce in response to the original response, the supplemental response to No. 12?

MR. ANDERSON: I will have to

confess that I completely lost track of the rambling narrative, but I will state that I think we have produced everything that we think should be produced under Interrogatory No. 12 or based on a production under Interrogatory No. 12.

MR. KATZ: Well, originally you did not object or refuse to produce any of the documents identified in Interrogatory 12; that is, originally with respect to the 284 and 285 and subsequently with respect to the 480 and 058 patents.

MR. ANDERSON: Well, I don't know exactly what you mean. To the best of my knowledge, we have not previously shown you some documents that we are now trying to take back from you or anything of that sort. You confuse me when you use that kind of a term.

MR. WELSH: Well, originally you stated you would give us all of those documents, then, in response to your request for - -

MR. ANDERSON: Where do you find that we will give you all of what documents?

MR. WELSH: We asked for all

the documents in 12 and you say see the produced documents in your statement leading up to your responses to all of the interrogatories. You stated instead of identifying documents, you would produce the documents, which I construed as an offer to produce documents.

MR. ANDERSON; Documents which are relevant and not privileged and within the scope of the request.

MR. WELSH: There was no objection on privilege that you call and there was no objection that they called for privilege in the original and supplemental response to Interrogatory No. 12.

MR. ANDERSON; Well, I don't know what you have in mind, but I think it is immaterial whether you feel that we had some collection of documents in one month and when we went through them we found some of them were privileged and before we showed them to you, claimed them as privileged, I think that is immaterial. We said we will show you the documents in response to the interrogatory and that is what

we mean, and we have produced them or identified them.

MR. WELSH: Well, you have subsequently stated you would not produce any documents in response to paragraph E and you did not identify those. There being an objection that they were neither relevant nor reasonably calculated to lead to admissible evidence.

MR. ANDERSON: Well, E is a catch-all paragraph. We were referring to a part of E. We have produced many documents which probably would fall under E. A great many.

MR. WELSH: Any attempts to enforce or license any such foreign applications or patents. The objection was that the documents were neither relevant or reasonably calculated to lead to admissible evidence. My question is, Are you going to persist in that objection or will you produce those documents?

MR. ANDERSON: We think they are irrelevant to any issue in this litigation.

MR. WELSH: And you are going to persist in the objection?

MR. ANDERSON: Maybe I didn't make myself clear. We consider them irrelevant and not producible in response to any proper interrogatory or request based on the issues in this action as far as we know. I think it is totally immaterial what licensing efforts are made under foreign patent rights which are governed by different laws and related to different people, different products, perhaps.

MR. WELSH: I would like to consider this discussion under our local rules in this regard. We believe that the licensing efforts particularly are relevant and may lead to admissible evidence. Licensing practices in foreign countries can be related to misuse of U. S. patents.

MR. ANDERSON: I disagree. I don't think licensing efforts abroad can be misuse of U. S. patents unless there are U. S. patents involved; and, if there were U. S. patents involved, I believe they would have been produced and accompanied in another section, if any of the patents in suit are involved.

MR. WELSH: Now, in your response to paragraph 29, there were listed some fifty -two letters which you stated you would not produce with respect to Interrogatory 12 as being subject to attorney-client privilege or attorney's work product. As noted earlier, there were identified in the response to Section 12 or Section B of Interrogatory 12, documents lettered A through Z, AA through AZ and BA and BB, which would be some fifty-six documents. All of those listed in the response to Interrogatory 12 are not included in the list in response to request No. 29. My question for you is, Have you produced those or, if not, will you do so to the extent that they are not listed in the response to request No. 29?

MR. ANDERSON: I am not sure I understand you again. We have listed a group of documents in response to request 29. We have listed a group of documents in response to Interrogatory 12.

MR. WELSH: Now, you identified them in Interrogatory 12 and in response to

request No. 29, they are listed as those that you refuse to produce. There are some that you simply identified in the response to Interrogatory No. 12 that are not included among those you have stated you refused to produce for attorney-client or work product reasons.

MR. ANDERSON: Either of these lists was intended to supercede the other. They are both lists on which we stand. And if you say if a document appears on one and not on the other, are we indicating that that document is to be produced, the answer is no. If it is on either list, we consider it to be privileged and we are not producing it.

MR. WELSH: Well, that would seem to be inconsistent with your identification in your response to Interrogatory No. 12 because there was no indication that you would not produce it at all. In fact, the contrary indication was made that that was - you made no representation, I should say, so I am asking you now, Will you produce those documents that appear on the list in response to Interrogatory 12, but do not appear

on the list in response to request No. 29 where you state you will not produce them?

MR. ANDERSON: I can't tell you without looking at the lists side by side on a document-by-document basis; and, if you want to list the ones that you have in mind, I can tell you, but I don't have those lists well enough in my mind to know if there is some error or inconsistency or the like which we would have to correct. We stand on our identifications.

MR. WELSH: Well, we noted some of them. What I would like to ask is, while we are here; that is, before we leave next Wednesday, you identify which of those documents that are listed in response to Interrogatory 12 and are not present in the list that you have said you will not produce under request No. 29 and tell us whether you will produce them or whether you refuse to produce them. We have filed subsequent interrogatories with respect to all of the documents listed in response to the request for documents of which you stated you would not produce for us and we have solicited specific

information with respect to each of those documents. Now, we have found these other documents which apparently have not been produced, we don't know whether they have been or not.

MR. ANDERSON: Well, if you have a document which you say we have identified and haven't produced, maybe it fell between a crack or maybe it is on one of these lists. Give me an identification of any of the documents that you specifically have in mind and we will check into it.

MR. KATZ: We can't tell because they are identified two different ways.

MR. WELSH: What we would like to do while we are here is have those documents which are included in the Interrogatory 12 response, but not in the request No. 29 response which you will not produce for us so that we can make the same inquiries with respect to those through the appropriate people here that we made with respect to all of the documents that you have refused to produce, but have identified in your response to our request for documents. In other

words, we are trying to go forward here to have a determination of the propriety of the claims of privilege and attorney work product.

MR. ANDERSON: Well, I am sorry; if you have a document you want us to tell you something about, ask about that document. It is Friday afternoon, a little after three, maybe I am getting a bit jaded, but I am not tracking with you at all. We certainly are not going to go through all of the documents and try to assemble them some way you want. I couldn't do it if I tried because I don't know what you want.

MR. WELSH: Well, we will ask you, Have you produced the documents requested in Interrogatory No. 12?

MR. ANDERSON: As far as I know, we have produced all documents except those that we are claiming attorney-client privilege on or which we have objected in one of the specifically stated objections in the request for production of documents.

MR. WELSH: So that you are then making the statement that you have produced

those documents which are identified in response to Interrogatory 12 which are not listed in response to request No. 29?

MR. ANDERSON: Or with respect to which we haven't somehow claimed privilege or objected on some other ground that is set forth in the various papers that we have filed.

MR. WELSH: So you represent that those have been produced then?

MR. ANDERSON: I am sorry, every document listed in response to Interrogatory 12 responded to your request of whether or not we would produce it and we said no.

MR. WELSH: Where did you say no? I would like to know where you said no?

MR. ANDERSON: Do you have the introductory paragraphs to your paragraphs that included interrogatory 12? That is the answer. I presume I don't have it either, so I can't be sure, but in identifying every document that we listed in response to Interrogatory 12, there are listed A, B, C, D, E, F and G; and G, as we recall it, said, Will you produce the

documents? And, in every case, our response is no. Mr. Williams points out that we discussed this specific point back in July.

MR. WELSH: Okay, that answers my last question, then.

MR. KATZ: Some of these were repeated in 29 in your response to request 29 and others were not and even though they were related to the answers to the same interrogatories. One said see produced documents except for the following, or essentially that is what you are saying when you gave the answer to Interrogatory 12; but then when you prepared your answer to document request 29 corresponding to the same interrogatory, there was a different set of documents that you identified as not being produced and, because there were two different lists and some were on both lists and some weren't, that is where there was a lot of confusion as to whether or not you changed your mind with respect to some of them and produced them.

MR. ANDERSON: That is not the case and I don't think we ever represented that

one list superceded the other and if there happened to be some overlapping, that is out of an abundance of caution perhaps.

MR. KATZ: Perhaps of the hundred files or so that were there, we didn't know whether a document was supposed to be there or not supposed to be there when we compared a document with this list to know if you changed your mind during this interim.

MR. ANDERSON: It is even possible that the same document could appear in two different files and be listed twice. It happens frequently in my experience in litigation.

MR. KATZ: Would it be possible if we provide you with those documents listed in request 29's response to have those available here for a witness to testify to with respect to the information that we sought regarding all of the other documents that were listed as not being produced? That would save time in the service of additional interrogatories and answers similar to those corresponding to Empire Interrogatory No. 5.

MR. ANDERSON: I think it is far more appropriate to do it in a written document. It is going to be extremely slow to try to do it the way you suggest. I am not saying you can't or don't have the right to, but I think it is going to be extremely belabored. It will require extensive consultation with counsel and it will not be productive.

MR. KATZ: In Empire's Interrogatories 4 and 5 to which we have received plaintiff's responses, there were I believe specifically with Interrogatory No. 5 which related to the documents not produced in their entirety - in other words, not produced at all. - and with respect to either a claim of attorney-client privilege or attorney's work product. And I couldn't find any reference in these answers to these documents originally identified as not being produced in answer to Interrogatory No. 12. It seemed that that was cause for concern that there was a change of mind with respect to these interrogatories, so perhaps maybe these responses were incomplete.

MR. ANDERSON: No, we responded

to your interrogatory which referred to plaintiff's response to Midway request for production of August 7, 1975.

MR. WELSH: Which in turn in paragraph 29 referred to Interrogatory 12 and the documents or things identified in that interrogatory.

MR. ANDERSON: I think it is the response. Our response listed documents and you --

MR. WELSH: But it didn't list those, that is the whole point here.. It only listed part of those in the fifty-two that were the response to Request No. 29, and Request No. 29 referred to Interrogatory No. 12 and the documents and things identified in that original and supplemental responses to those interrogatories, and 12B, with certain of these documents that we have not been provided the information.

MR. ANDERSON: You never asked for the information.

MR. WELSH: It is right there in the request.

MR. ANDERSON: But it is not in the response, and the interrogatory is 5A, "In plaintiff's response to Midway's request for production of August 7, 1975, plaintiff's enumerated documents." Then you ask about documents which we enumerated and we responded fully to the interrogatory. Now, if you wrote the wrong interrogatory, don't tell us we didn't give you a complete response. It is the interrogatory that determines what the response is.

MR. WELSH: It was the response that - either the response was incorrect or your interrogatory answer was - that is, the Empire interrogatory answer was incomplete.

MR. ANDERSON: Nothing of the kind, your interrogatory was poorly phrased and now you are trying to generate some sort of silly blame or something. Why don't you just face up to the fact that you asked an interrogatory that didn't ask what you intended to ask and now you want to ask another one or phrase one; and, rather than keeping this reported pushing that machine endlessly and wasting a lot of time, I don't

think it really matters, but if you want the more complete answer or a different answer or an additional answer, ask another interrogatory. We can argue all day whether your interrogatory was defective or our answer was defective, but I think the interrogatory speaks for itself.

(Whereupon, a recess
was taken.)

MR. WELSH: Mr. Anderson, I agree with you that perhaps it is a question of semantics or a matter of arguing as to whether responses were complete or whether the interrogatories were properly worded. In order to expedite matters, we will serve new interrogatories to handle those documents which are included in Interrogatory 12 response and not included in the response to Request No. 29.

MR. ANDERSON: All right. I don't insist that you do that, but I think that is the best procedure.

MR. WELSH: Well, unless you will agree to provide it.

MR. ANDERSON: No, I was being facetious. I wouldn't mind if you left out the whole thing.

MR. WELSH: The only other matter remaining is in connection with Request No. 3 and the corresponding paragraph of the attachment to the subpoena and the notices of deposition. There was some confusion as to just what correspondence had been produced; that is, correspondence between Magnavox and Sanders. There had been copies of some produced without portions expunged, copies of others produced with portions expunged, and, so far as I know, there were other correspondence that no copies were produced; and today you brought three files marked respectively Magnavox No. 637 correspondence through 1973, Magnavox File No. 637 correspondence 1974, and Magnavox No. 637, 1975. I ask if these are all of the files of correspondence with Magnavox which Sanders keeps?

MR. ANDERSON: I think that request you will have to ask of the witness.

MR. WELSH: Mr. Seligman?

THE WITNESS: I turned over all correspondence between Magnavox and Sanders to Mr. Williams. I can't say whether or not it is all in those files.

MR. WELSH: Now, I didn't ask if all of the correspondence was in these files, I asked if these are the only files that you keep of correspondence with Magnavox?

THE WITNESS: There may be other correspondence which appears at some of the patent files which have been produced here today, anyway, but I would assume that a copy would have gotten into those files. I don't know any other files that would contain correspondence between Magnavox and Sanders that has not been gathered during my search.

MR. WELSH: Well, specifically when you gave Mr. Williams what I believe you described as all of the correspondence between Magnavox and Sanders, did you give him just these three files?

THE WITNESS: I can't say that for sure. There were so many files that I

handed over to him, whether it was all contained in that, I cannot say. All I can say is that I gathered, to the best of my knowledge, all the correspondence between the two parties and gave it to him. I can't say that it was all in those three files. Certainly I know of -- I can think of other files that were given to Mr. Williams that had correspondence between the parties. For example, I think earlier we produced the royalty reports which certainly I guess did not show up in those files, but in other files.

MR. WELSH: Any other files than these that you can remember that you turned over to him that contained correspondence between Magnavox and Sanders?

THE WITNESS: At the present time, I can't think of any others.

MR. WELSH: Do you know with whom Magnavox corresponds in the Sanders organization?

THE WITNESS: Primarily with Mr. Etlinger, some correspondence with myself, possibly some with Mr. Baer; I am not sure of

that, though.

MR. WELSH: Primarily with the Patent Department?

THE WITNESS: That is correct.

MR. WELSH: Other than the royalty report files and these three files which were produced this morning, does the Patent Department keep or has it kept any other files of correspondence between Magnavox and Sanders?

THE WITNESS: If it has, it has been gathered. To my knowledge, anything that has been gathered has been given to Mr. Williams.

MR. WELSH: Did you turn these files of 637 over?

THE WITNESS: I turned over File 637 to Mr. Williams.

MR. WELSH: And in File 637, were there any others than these three folders?

THE WITNESS: I can't recall.

MR. ANDERSON: Well, Mr. Welsh, there are some other folders that bear the No. 637, all of which have been produced and you

have asked the witness about them. There is one that bears the File 637MHG.

MR. WELSH: That is the one that contains the 687 crossed out?

MR. ANDERSON: That is correct. Another one marked "Executed Agreement (637)". There is another one marked drafts of agreement filed 637, all of which have been produced and you have seen and you have asked the witness about.

THE WITNESS: In those questions regarding Magnavox-Sanders files, they weren't very specific and I would like to clarify my answer, those files that pertained to the present subject matter. There might have been some that concerned other subject matter and I haven't looked at those.

MR. WELSH: We, of course, are interested in the present subject matter only.

MR. ANDERSON: There is another one marked 637 royalty reports, that is all I see at the moment, but there might be more, the record will speak for itself. You have

identified a great many.

MR. WELSH: Now, we have here five folders bearing the file No. 637 on a typed written label and attached to the tabs of the folders. There was also this other file 637 handwritten on a folder that previously had file No. 687 crossed out, does this folder with the file 687 crossed out contain any correspondence between Magnavox and Sanders?

THE WITNESS: It only contains a number of patents, I don't know whether they were obtained through correspondence through Magnavox or not.

MR. WELSH: Referring to the other five files bearing the typewritten No. 637, do you know whether each of these files contains all of the documents it had in it at the time you turned it over to Mr. Williams?

THE WITNESS: No.

MR. WELSH: Did you make any effort to determine that?

THE WITNESS: No.

MR. WELSH: Did you make any

record of the documents that were in those files when you turned them over to Mr. Williams?

THE WITNESS: No.

MR. WELSH: Would it be possible for you to determine by examining them now whether they contain all the documents that were in them when you turned them over to Mr. Williams?

THE WITNESS: No.

MR. WELSH: Now, Mr. Anderson, paragraph 3 of the attachment to the subpoena and the notices and corresponding paragraph of the previous request seek communications between Plaintiff Magnavox and Plaintiff Sanders relating to certain identified subject matters in paragraphs A through J, and the response to the request indicated first that plaintiffs would permit inspection and copying of the documents requested in this paragraph not previously produced for Midway except as follows. Then there was an objection to documents containing royalty rates and an indication that those documents would be produced with the royalty rates deleted, and I believe they were, and subsequently we have

... production of the documents with the royalty rates under the protective order.

MR. ANDERSON: Yes, in the interim a protective order was agreed to and entered into between us and then we did produce the documents unexpurgated.

MR. WELSH: Now, there was an objection to subparagraph B insofar as the request of documents dated after the filing date of the action; and subparagraph C is requesting documents which are neither relevant to the second matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Request 3B referred to sublicensing of any other party under said patents or the applications therefore. Do you persist in that objection?

MR. ANDERSON: Is your question with respect to both subparagraph B and C?

MR. WELSH: No, first paragraph B which we feel to be relevant at least to the questions of misuse and unenforceability.

MR. ANDERSON: I will do a

little checking. For the moment, we will persist in our objection to subparagraph B. I just conferred with Mr. Williams, we are not certain that there are any Sanders documents in that category, subparagraph B, and I will so advise you if there aren't. It would be unwise to fight over whether or not we will produce them if there are no documents in the category. We will let you know Monday whether there are any or not.

Q. Now, with respect to subparagraph C relating to licensing to sublicensing under any foreign patent or foreign patent application - - -

MR. ANDERSON: We believe that that subject matter is irrelevant to any issue relating to the U. S. patents and we will persist in that objection. As I stated, if a document included reference in the license to both U. S. and foreign rights, I think it would be producible and we would not use the mere presence of foreign discussion to exclude that from the production.

MR. WELSH: Now, next in

response to Request No. 3 is a list of eighteen documents with identifications thereof for which claim of attorney-client privilege or attorney work product was or is being made and it was stated that copies of those would not be produced.

MR. ANDERSON: In their entirety, is that what you mean?

MR. WELSH: Yes, that is what it states. They would not be produced at all. I presume when you say the documents will not be produced in their entirety, you mean each document in its entirety would not be produced?

MR. ANDERSON: Yes, you are correct, documents 1 through 18 have been withheld in their entirety on the ground of attorney-client privilege.

MR. WELSH: And certain other documents which have been produced to us with portions expunged?

MR. ANDERSON: That is correct.

MR. WELSH: Now, those documents from which - the original documents from which portions were expunged and these

documents which are listed here as not being produced in their entirety, were they removed from these folders of files 637?

MR. ANDERSON: They were removed from whatever file that particular document was in originally.

MR. WELSH: Were any other documents other than those, any of those, removed from these files before they were produced for us?

MR. ANDERSON: With respect to some files, certainly documents that were unrelated to the subject matter of this lawsuit were removed. Now, whether that was true with respect to the 637 files which are so numbered and are in the pile in front of you, I don't know. Mr. Williams tells me that I am correct, certain documents were removed.

MR. WELSH: From these files?

MR. ANDERSON: From these files as irrelevant or not within the scope of any of the requests that were made and there are

a few that were removed because they are attorney-client privileged documents, but we did not have a chance to prepare a list of those and we will provide you with that list promptly.

MR. WELSH: Would that be possible by Monday also?

MR. ANDERSON: Yes, we will give you some kind of a record or read it into the record on Monday.

MR. WELSH: Well, maybe even a handwritten or Xerox copy of it or give us time and we will write it down ourselves because we won't get the record for some time. Now, of those which were removed and not furnished to us, with portions expunged or not listed or about to be listed as not being produced, did any of them fall within the categories of INJ?

MR. ANDERSON: None of them fell within the categories of any of the paragraphs. Excuse me, I and J are two to which we objected and we continue that objection in that we objected on the ground that they were broad, vague and impossible to determine whether documents would or

would not fall within the scope of that. Failing to describe the documents with reasonable particularity as required by the rules.

MR. WELSH: Were any documents withdrawn from these folders other than those I mentioned? That is, those that were furnished with portions expunged or those for which you are claiming attorney-client privilege or work product; did any of those relate to any matter pertaining to the patents or the applications for the patents in suit here or the reissues?

MR. ANDERSON: We were very careful and thorough in comparing the requests with the documents and all I can tell you is that either they have been produced, they were excluded because they were attorney-client or work product, in which case we have identified them or they were subject to one of our various objections.

MR. WELSH: Well, did any of them relate to matters pertaining to the patents or the applications for the patent or any of the reissues?

MR. ANDERSON: I don't know.

You may ask the witness if he knows.

MR. WELSH: But he says he doesn't know what documents were withdrawn and we are talking about the documents that were withdrawn. If you furnish them to him, then I can ask him about them.

MR. ANDERSON: We have complied with your request after carefully studying it and studying the documents.

MR. WELSH: Well, I think the problem, Mr. Anderson, is that the documents are being produced or not depending on your interpretation or objection to the wording of our request or the extent of it in view of your objection to sections I and J of paragraph 3, and we don't believe that we should be limited to rely on your interpretation. Therefore, I would like to request an identification of each of the documents which have been removed from these files and not already furnished to us with portions expunged or which have not - I mean which have or will be identified to us as being subject to the attorney-client privilege or work product?

MR. ANDERSON: Well, I don't think you are entitled to that. I will take it under advisement.

MR. WELSH: And would you let us know about that?

MR. ANDERSON: We certainly have a right to remove documents that we don't think are producible or fall within the scope of any of your requests and we will exercise that right, but we will take it under advisement.

MR. WELSH: Well, as you indicated with respect to - I believe you indicated with respect to subparagraph G relating to misuse of the patents and H relating to antitrust violations, that is the subject of interpretation and we would like the opportunity to examine this correspondence to be able to interpret them ourselves and that is the reason that we are asking for all of these other documents.

MR. ANDERSON: Well, on that theory, you could ask for all the documents in the possession of Sanders Associates, and I don't think you are entitled to that.

MR. WELSH: I am asking you only for the documents which were previously in the correspondence file No. 637 and which have been removed and neither furnished to us nor identified as subject to the claim of attorney-client privilege or attorney work product.

MR. ANDERSON: I do not think you are entitled to the production of a file, you are only entitled to the production of documents which are properly producible in the scope of your request. As I say, I will take it under advisement. We have stated objections to certain of your sections and removed documents relating to those subjects including foreign licensing which you know about; and you have asked us if we stand on that objection and I told you we do.

MR. WELSH: Well, I am asking specifically now that the documents removed from this 637 file be identified so that we can take whatever action we feel necessary to secure the production of those documents. Mr. Seligman, does File No. 637 have some identification? Is

there an index of files? What does File
637 relate to?

THE WITNESS: The Magnavox
file generally.

MR. WELSH: Is there an
index of these file numbers?

THE WITNESS: Of what is in
the file?

MR. WELSH: No, is there
an index of the file numbers of the patent
Department with titles of the files in addition to
the numbers?

THE WITNESS: Yes.

MR. WELSH: Do you know what
the title of this File 637 is?

THE WITNESS: In the index?

MR. WELSH: Yes.

THE WITNESS: No.

MR. WELSH: Could you furnish
that information, Mr. Anderson?

MR. ANDERSON: All right.

MR. WELSH: I presume the index
is kept in the Patent Department?

THE WITNESS: That is true.

MR. WELSH: Do you know whether File 637 relates to correspondence with Magnavox and video games; is it a file for that purpose?

THE WITNESS: Yes.

MR. WELSH: Does it contain any correspondence other than correspondence relating to video games?

THE WITNESS: I can't say for sure.

MR. WELSH: I had one other request for documents which I would like to make now, Mr. Anderson, that is, I'd like to have Sanders documents relating to the purchase or obtaining of the PDP-1 computer about which Mr. Seligman testified yesterday. I'd like to have copies of correspondence between Sanders and DEC, Digital Equipment Corporation, relating not only to the PDP-1, but also another computer named PDP-6, if they have such correspondence, and the PDP-11.

MR. ANDERSON: Well, I think

you had better put that request in the usual form under the Graduate Rules. We will process it. I think it is burdensome in that I would think such documents could be in various places throughout the company. I think it is irrelevant. It is not likely to lead to admissible evidence and therefore I think you had better file a formal request and we will take it under advisement.

Specifically, MR. WELSH: Referring to Request No. 30 and the corresponding attachment to the subpoena and notices; that is, all documents and things known to plaintiffs dated or known prior to August 21, 1969, relating or referring to the use of a cathode ray tube and circuitry for causing images to be displayed on the CRT and for detecting and responding to coincidence of such images. The response of August 7 was that plaintiffs have no present knowledge of any such documents or things other than the documents of plaintiff Sanders relating to the invention by the named inventors of the subject matters of the patents in suit, the prior art identified by defendants in this action and cited during the

prosecution of the four patents and documents referring to that prior art. Did you subsequent to receipt of the notice of deposition have Sanders make a search for any documents or things other than those which were set forth in the response to the request?

MR. ANDERSON: I object.

We had substantial testimony on this yesterday. Specifically, paragraph 30, you mean in addition to that?

MR. WELSH: Yes. Well - --

MR. ANDERSON: The question has been asked and answered yesterday, I am sure.

MR. WELSH: Well, are you referring to the Space War programs and I think they have already been marked as exhibits?

MR. ANDERSON: Yes, Exhibits 2, 3 and 4. We had the interrogation of the witness and my comments there too.

MR. WELSH: Was there not also Exhibit 5?

MR. ANDERSON: Yes, you were right. Four is the note that accompanied three,

as I recall the testimony, and five has also been produced.

MR. WELSH: Did you search for any things under paragraph 30 and did you find anything other than these Exhibits 2, 3, 4 and 5 which were produced yesterday?

THE WITNESS: This is subsequent - when?

MR. WELSH: Well, at any time. The original request was subsequent to the receipt of the notice of deposition.

THE WITNESS: As I think I testified yesterday, we updated continually or periodically the search for documents pertinent to the present action and provided Mr. Williams with anything that we found.

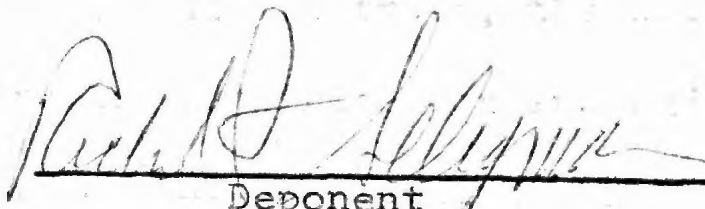
MR. WELSH: That completes my examination of this witness at this time; but in view of the difficulties that we are having with respect to agreement regarding the production of certain documents, I will simply adjourn the deposition with the view to resuming it depending upon the resolution of our disagreement.

MR. ANDERSON: All right.

MR. HERBERT: In spite of the fact that we didn't receive a notice of this witness, we will agree to have you interrogate him if you have any questions.

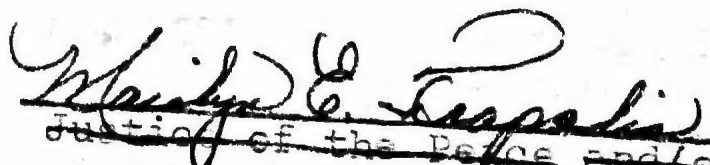
MR. HERBERT: I have no questions.

MR. ANDERSON: Mr. Seligman, you are excused.


Deponent

THE STATE OF NEW HAMPSHIRE)
COUNTY OF Hillsborough) SS.

Subscribed and sworn to before me this 23rd
day of February 19 76.


~~Justice of the Peace and/or~~
~~Notary Public~~
Marilyn E. Trepalis
Notary Public
My Commission Expires March 19, 1980